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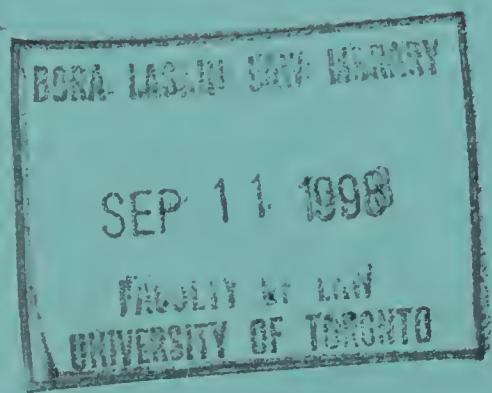
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CHILDREN AND THE LAW

1998/99

Volume I

R. Bessner



UNIVERSITY OF TORONTO

CHILDREN AND THE LAW

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1. Children's Rights

Introduction

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- b) K.A. Hughes and H.T.G. Andrews, "Children's and Family Rights and the Role of the State in Custody and Child Protection Matters" in *Justice Beyond Orwell*, edited by R.S. Abella and M.L. Rothman (Les Éditions Yvon Blais Inc.) (1985) 25
- c) M.D.A. Freeman, "Children's Rights: The evolution of a concept" in *The Rights and Wrongs of Children*, (London: Francis Pinter) (1983) 43
- d) B.C. Hafen, *Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their "Rights"*, (1976) B.Y.U.L. Rev. 605 56
- e) C.D. Gill, "Essay on the Status of the American Child, 2000 A.D.: Chattel or Constitutionally Protected Child-Citizen?" (1991) 17 Ohio Northern Law Rev. 543 61
- f) J. Wilson, "Defining Children's Rights," (1994) 38 The Law Soc. of Upper Can. Gaz. 50 80
- g) C. Lasch, "Hillary Clinton, Child Saver: What she values will not help the family," *Harper's Magazine*, October 1992 85
- h) S. Fine, "Children Start to Flex Legal Muscles in Canada," *The Toronto Globe and Mail*, April 22, 1993 91

2. The Child Witness

(1) Psychological Studies on The Reliability of Children's Testimony

- a) G. Goodman and V. Helgeson, "Child Sexual Assault: Children's Memory and The Law," (1988) 12 Provincial Judges Journal 17 93

- b) R.K. Oates, "Children as Witnesses," (1990) 64 Australian L.J. 129 105
- c) M. Mian, K. Haka-Ikse, M. Lefkowitz, and C. McGoe, "The Child as Witness" (1991), 4 C.R. (4th) 359 111
- d) J. Spencer and R. Flin, "Child Witnesses - Are They Liars?" (1989) 139 New L.J. 1601 119
- e) D. Jones and R. Krugman, "Can A Three-Year-Old Child Bear Witness to Her Sexual Assault and Attempted Murder?" (1986) 10 Child Abuse and Neglect 253 121

(2) Competency Rules for Child Witnesses

Ontario Evidence Act, R.S.O. 1995, s. 18.
Canada Evidence Act, R.S.C. 1985, s. 16.

- a) *R. v. Bannerman* (1966), 48 C.R. 110 (Man. C.A.) 125
- b) *R. v. Budin* (1981), 58 C.C.C. (2d) 352 (Ont. C.A.) 139
- c) *R. v. Fletcher* (1982), 1 C.C.C. (3d) 370 (Ont. C.A.) 144
- d) *Khan v. The Queen* (1991), 79 C.R. (3d) 1 (S.C.C.) 152
- e) *R. v. Marquard* (1993), 25 C.R. (4th) 1 (S.C.C.) 160
- f) A. Peter Nasmith, "High Time for One Secular 'Oath,'" (1990) 24 The Law Soc. of Upper Can. Gaz. 230 180

(3) The Corroboration Requirement for Children's Testimony

Ontario Evidence Act, R.S.O. 1990, s. 18(2)

- a) *R. v. Kendall* (1962), 132 C.C.C. 216 (S.C.C.) 190
- b) *R. v. R.W.* (1992), 13 C.R. (4th) 257 (S.C.C.) 194
- c) N. Bala, "Children as Witnesses in Sexual Abuse Cases: Statutory Reforms" - Excerpt in 1991 Canadian Bar Association Seminar on *Sexual Abuse of Children: Criminal & Family Law Proceedings*, 19-25 201

(4) The Applicability of The Hearsay Rule to the Statements of Children

- a) *Khan v. The Queen* (1991), 79 C.R. (3d) 1 (S.C.C.)152
- b) J. Spencer and R. Flin, "A Critical Look at the Hearsay Rule Concerning Children's Evidence" in *The Evidence of Children: The Law and The Psychology*, (Blackstone Press) (1990) 135-178204
- c) D.A. Rollie Thompson, "Taking Children and Facts Seriously: Evidence Law in Child Protection Proceedings - Part I" (1988) 7 Can. J. of Fam. L. 11221

(5) Accommodation of the Child Witness

Criminal Code, R.S.C. 1985, c. C-46, s.715.1 and 1993, c.45, s.486

- a) J. Spencer and R. Flin, "The Case for Change" in *The Evidence of Children: The Law and The Psychology*, (Blackstone Press) (1990) 282-305256
- b) G. Davies and H. Westcott, "The Child Witness in the Courtroom: Empowerment or Protection?" in *Memory and Testimony in the Child Witness*, Maria S. Zaragoza et al. (eds.) (California: Sage Publications, Inc.) (1995) 199-213269
- c) *R. v. Levogiannis* (1993), 25 C.R. (4th) 325 (S.C.C.)277
- d) *R. v. Paul M.* (1990), 1 O.R. (3d) 341 (Ont. C.A.)286
- e) *R. v. L.* (1993), 25 C.R. (4th) 285 (S.C.C.)292
- f) *R. v. C.C.F.* (1997), 154 D.L.R. (4th) 13 (S.C.C.)313
- g) A. E. Tobey et al, "Balancing the Rights of Children and Defendants: Effects of Closed-Circuit Television on Children's Accuracy and Jurors' Perceptions" in *Memory and Testimony in the Child Witness*, Maria S. Zaragoza et al. (eds.) (California: Sage Publications, Inc.) (1995) 214-239324
- h) *Maryland v. Craig* (1990), 58 L.W. 5044 (U.S. Sup. Ct.)337
- i) V. Paisley, "Testimony by The Child Witness in Criminal Court: Tactical and Ethical Issues in Examining and Cross-Examining a Child Complainant" (1988)347

j) Ontario Medical Association Committee on Child Welfare, "The Child in Court: Some Changes Needed" (1987) 359

3. The Legal Representation of Children

a) S. Himel, "Representing Children" in *Canadian Child Welfare: Children, Families and the State*, N. Bala, J. Hornick, R. Vogl (eds.) (Thompson Educ. Pub.) (1991) 196-206 362

b) M. Peterson-Badali and R. Abramovitch, "Children's Knowledge of the Legal System: Are They Competent to Instruct Legal Counsel?" (1992) Can. J. of Crim. 139 373

c) J.C. Pearson, "Legal Representation Under The Young Offenders Act" in *The Young Offenders Act: A Revolution in Canadian Juvenile Justice*, A. Leschied, P. Jaffe and W. Willis (eds.), (1991) 114-127 385

d) J.W. Eayrs, "Some Problems of Professional Ethics in the Legal Representation of Minors," (1986) 20 Gazette 106 392

e) *Re W.* (1980), 27 O.R. (2d) 314 (Ont. Prov. Ct. Fam. Div.) 394

f) *Re C.* (1980), 14 R.F.L. (2d) 21 (Ont. Prov. Ct. Fam. Div.) 397

g) *Lauro v. Lauro* (1988), 13 R.F.L. (3d) 189 (Ont. Dist. Ct.) 404

h) *Catholic Children's Aid Society of Metropolitan Toronto v. C.M. and D.L.* (1991), 35 R.F.L. (3d) 1 (Ont. Ct. Prov. Div.) 407

i) *Official Guardian v. M.(S.)* (1991) 35 R.F.L. (3d) 297 (Ont. Ct. Gen. Div.) 421

j) *Strobridge v. Strobridge* (1994), 18 O.R. (3d) 753 (Ont. C.A.) 425

4. Child Abuse

(1) General

a) M.D.A. Freeman, "Children Who Are Wronged: The Problem of Abuse and Neglect" in *The Rights and Wrongs of Children*, (London: Francis Pinter) (1983) at 104 433

b) N. Polansky, M.A. Chalmers, E. Buttenwieser and D. Williams in *Damaged Parents: An Anatomy of Child Neglect* (1981) at 1 445

(2) The Duty to Report

- a) *Child & Family Services Act*, R.S.O. 1990, c. C-11, s.72 455
- b) R. Vogl, "Initial Involvement" in *Canadian Child Welfare Law: Children, Families and The State*, N. Bala, J. Hornick & R. Vogl (eds.), (Thompson Educ. Pub.) (1991) 33-35 456
- c) *R. v. Cook* (1985), 46 R.F.L. (2d) 174 (Ont. C.A.) 458
- d) *R. v. Stachula* (1984), 40 R.F.L. (2d) 184 (Ont. Fam. Ct.) 463
- e) M. Bailey, "The Failure of Physicians to Report Child Abuse," (1982) 40 Univ. of Tor. Law Rev. 49 468
- f) F.S. Berlin, "Effects of Statutes Requiring Psychiatrists to Report Suspected Sexual Abuse of Children," (1991) 148 Amer. J. Psychiatry 449 478

(3) Limitation Periods

- a) N. Des Rosiers, "Limitation Periods and Civil Remedies for Childhood Sexual Abuse," (1992) 9 C.F.L.Q. 43 483
- b) *M. (K.) v. M. (H.)* (1992), 96 D.L.R. (4th) 289 (S.C.C.) 499
- c) S. Fine, "Ruling on incest case hailed as possible deterrent," *The Toronto Globe and Mail*, October 30, 1992 526
- d) N. Clevenger, "Statute of Limitations: Childhood Victims of Sexual Abuse Bringing Civil Actions Against Their Perpetrators after Attaining Age of Majority," (1991-1992) 30 J. of Fam. L. 447 527
